Sherry Smith, LCSW
P.O. Box 157
Glen Ellen, CA 95442
(707) 480-8191 (cell)
(707) 996-6001 (fax)
gadfly@sonic.net

Congressman Kevin Brady
Committee on Ways and Means Health Subcommittee, via http://waysandmeans.house.gov
Hearing on Current Hospital Issues in the Medicare Program

To the Honorable members of the House Committee on Ways and Means Health Subcommittee:

My complaints are about Observation Status, something that doesn't exist, as far as I'm aware, except in Medicare. For the past two years, I have represented my aunt in her Medicare appeal about Observation Status at a hospital that led to an approximately $19,732.50 bill for rehabilitation at a Skilled Nursing Facility. During this time, I've filed appeals and also written letters to Congressmen, Senators, and President Obama about what I believe are violations of my aunt's due process rights (42 CFR sections 405.1205 et seq; Fifth and Fourteenth Amendments of the Constitution).

On March 30, 2012, my 92 year-old aunt fell and fractured her pelvis and left olecranon. An ambulance transported her to the local hospital because she could not stand or walk. At the ER, the physician admitted my aunt to the hospital as an inpatient. However the next day a different doctor reversed that decision to Observation Status. On April 1, 2012, orthopedic surgeons repaired my aunt's elbow. The hospital then placed my aunt on inpatient status until her transfer to a rehabilitation facility on April 3, 2012. She remained in the same hospital room throughout her stay. Thus, she had two inpatient days of stay and two observation status days prior to her transfer directly to the SNF where she remained until about June 25, 2012. My aunt received excellent care from doctors, nurses, and therapists.

Medicare initially denied payment for the ambulance but later granted our appeal. However, the appeals over the $20,000 SNF bills are currently sitting at the ALJ level. During the appeals, I believe that Medicare, and its contractors, Maximus and Palmetto, violated my aunt's due process rights. On July of 2012, I sent Palmetto my appeals via certified mail. They failed to issue a decision or denial letter on the first level appeal. I literally begged via numerous phone calls and certified letters asking them to send us a denial letter so that we could appeal to the next level. After contacting Congressman Sam Farr for his assistance, Mary K. Lucas, Congressional Specialist with Palmetto GBA wrote that: "On November 27, 2012, I requested that the Palmetto GBA Redeterminations Unit review Mrs. ____ Part A appeal. On November 29, 2012, Mrs. ___ appeal was dismissed. Her hospital claim was paid in full, so there was nothing to dispute about the way it was processed."

On February 19, 2013, Hadiya Green, Appeals Coordinator at Palmetto GBA, wrote to me and stated that: "This is in response to a request for redetermination of a claim for services provided to ____. We are unable to evaluate your request, as the claim(s) or dates of service identified in

your request have not been denied by the Intermediary. The only non-covered charges on this claim may be the coinsurance and deductible which are not appealable. Therefore we cannot take any further action and must dismiss your request."

Essentially, Palmetto and Maximus claimed that my aunt can't appeal the Observation Status that led to a $20,000 SNF bill. And the Second level of appeal was denied because Palmetto and Maximus failed to issue us denial letters on my aunt's first level appeal. Thus, the appeal is now before an ALJ. This appeal process has taken two years.

According to the Medicare.gov website, "all people with Medicare have the right to…Request an appeal of health coverage or payment decisions." Furthermore, the website states that beneficiaries have the right to "be protected from discrimination" and "Get information in a way you understand from Medicare, health care providers…" Medicare treats seniors differently than everyone under the age of 65. Because I have a PPO health insurance, if I remain at a hospital for more than 24 hours, they will admit me as an inpatient. Although my aunt was in the hospital for four days, the utilization committee, and one doctor, decided she would be Observation Status for 2 days and inpatient for 2 days. Thus, Medicare has essentially discriminated against my aunt and other seniors who rely on these federal health care benefits. By denying my aunt the right to appeal Observation Status, Medicare and the QIC's have also denied her due process rights under the Constitution, federal law, and regulations.

The Office of Medicare Hearings and Appeals held a forum on February 12, 2014 about the delays in Medicare hearings. Although a notice was sent to some organizations, I don't believe the notice was sent to beneficiaries or their representatives. I wrote to Ms. Nancy J. Griswald, Chief Administrative Law Judge, concerning this as well as to ask her about how many beneficiaries currently wait for a hearing. According to an April 1, 2014 letter written by Eileen McDaniel, Director, Office of Programs, "For beneficiary-initiated appeals received in June 2013, the average case processing time is currently 140 days, with 28% of beneficiary-initiated appeals received during that time still pending a decision. For beneficiary-initiated appeals received in August 2013, the average case processing time is currently 112 days, with 33% of beneficiary-initiated appeals received during that time still pending decision."

I sent Ms. McDaniel a follow-up letter since she failed to give me the number of beneficiaries awaiting appeals. She replied that "as of April 22, 2014, we have 2,537 pending appeals that were initiated by beneficiaries or representatives…She also explained that with my type of appeal, i.e. where the QIC dismissed my appeal, "the 90-day adjudication period does not apply. See 42 C.F.R. section 405.1016(a)…." I filed the appeal via certified mail to the Office of Hearings on July 22, 2013. It's now been ten months since I requested the hearing.

I hope you will investigate what I believe are injustices against seniors in the way Medicare dictates hospital stays as well as the many obstacles placed in the way of beneficiaries who appeal Observation Status to Medicare and the QIC's.

Sincerely,
Sherry Smith, LCSW